

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

SHIRL KEAHEY,

Plaintiff,

v.

CPS, *et. al.*,

Defendants.

Case No. 3:21-CV-00391-RCJ-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

[ECF No. 1]

Before the Court is Plaintiff Shirl Keahey's ("Keahey"), application to proceed *in forma pauperis* (ECF No. 1), and her *pro se* civil rights complaint (ECF No. 1-1). For the reasons stated below, the Court recommends that Keahey's *in forma pauperis* application, (ECF No. 1), be granted, and her complaint, (ECF No. 1-1), be dismissed, with prejudice.

I. IN FORMA PAUPERIS APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities."

¹ This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 LSR 1-1.

2 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with
3 some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely
5 destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
6 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Keahey cannot pay the filing
8 fee; therefore, the Court recommends that the application, (ECF No. 1), be granted.

9 **II. SCREENING STANDARD**

10 Prior to ordering service on any defendant, the court is required to screen an *in*
11 *forma pauperis* complaint to determine whether dismissal is appropriate under certain
12 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
13 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint for
14 the enumerated reasons). Such screening is required before a litigation proceeding *in*
15 *forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507
16 (9th Cir. 2015).

17 “[T]he court shall dismiss the case at any time if the court determines that – (A) the
18 allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious;
19 (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief
20 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-
21 (iii).

22 Dismissal of a complaint for failure to state a claim upon which relief may be
23 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
24 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint under
25 this statute, the court applies the same standard as is applied under Rule 12(b)(6). See,
26 e.g., *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for
27 determining whether a plaintiff has failed to state a claim upon which relief can be granted
28 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)

1 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling
2 on a question of law. See *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.
3 2000) (citation omitted).

4 The court must accept as true the allegations, construe the pleadings in the light
5 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
6 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints
7 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes*
8 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

9 A complaint must contain more than a “formulaic recitation of the elements of a
10 cause of actions,” it must contain factual allegations sufficient to “raise a right to relief
11 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
12 “The pleading must contain something more. . . than. . . a statement of facts that merely
13 creates a suspicion [of] a legally cognizable right of action.” *Id.* (citation and quotation
14 marks omitted). At a minimum, a plaintiff should include “enough facts to state a claim to
15 relief that is plausible on its face.” *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678
16 (2009).

17 A dismissal should not be without leave to amend unless it is clear from the face
18 of the complaint the action is frivolous and could not be amended to state a federal claim,
19 or the district court lacks subject matter jurisdiction over the action. See *Cato v. United*
20 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
21 Cir. 1990).

22 **III. SCREENING OF COMPLAINT**

23 In her complaint, Keahey sues Defendants CPS, and multiple CPS employees for
24 what appears to relate to a visitation dispute with Keahey and her grandchildren. (See
25 ECF No. 1-1 at 2, 4, 6-7.) Keahey alleges “alienation of affection (sic)” and states “they
26 won’t let me see or be around my grandsons.” (*Id.* at 4.) Keahey does not specify the
27 basis for this Court’s jurisdiction or the relief she seeks.

28 Keahey’s complaint is rambling, nonsensical, and filled with incomplete sentences.

1 Dismissal on those grounds alone is appropriate. Federal Rule of Civil Procedure 8(a)(2)
2 requires that a complaint contain “a short and plain statement of the claim showing that
3 the pleader is entitled to relief, in order to give the defendant fair notice of what the . . .
4 claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (quotation and
5 alteration omitted). It must also include “a demand for the relief sought. . . .” Fed. R. Civ.
6 P. 8(a)(3). Here, Keahey’s narrative is largely incomprehensible narrative, which makes
7 it nearly impossible for the Court to identify the factual or legal basis for her claims or the
8 nature of her requested relief. To the extent Keahey is attempting to plead a claim for
9 “alienation of affection,” Nevada long ago abolished claims for alienation of affection by
10 statute, so that theory cannot be a foundation for relief. Nev. Rev. Stat. § 41.380. Keahey
11 states no claim upon which relief may be granted, and given the vague nature of the
12 allegations, amendment would be futile. See *Cato*, 70 F.3d at 1106.

13 Notwithstanding the above, this Court also lacks subject matter jurisdiction in this
14 case—it is well recognized that federal courts do not have jurisdiction to resolve domestic
15 relations disputes involving child custody. See *Ankenbrant v. Richards*, 504 U.S. 689, 703
16 (1992) (domestic relations exception to federal jurisdiction divests federal courts of the
17 power to issue child custody decrees); see also *Peterson v. Babbitt*, 708 F.2d 465, 466
18 (9th Cir. 1983) (per curiam) (“[F]ederal courts have uniformly held that they should not
19 adjudicate cases involving domestic relations, including the ‘custody of minors and a
20 *fortiori*, rights of visitation.’”). The subject matter of domestic relations and particularly
21 child custody problems is generally considered a state law matter. *Buechold v. Ortiz*, 401
22 F.2d 371, 372 (9th Cir. 1968). “The strong state interest in domestic relations matters, the
23 superior competence of state courts in settling family disputes because regulation and
24 supervision of domestic relations within their borders is entrusted to the states, and the
25 possibility of incompatible federal and state court decrees in cases of continuing judicial
26 supervision by the state makes federal abstention in these cases appropriate.” *Peterson*,
27 708 F.2d at 466 (citing *Moore v. Sims*, 442 U.S. 415 (1979)).

28 For all of the above, the Court recommends the complaint be dismissed, with

1 prejudice, as amendment would be futile.

2 **IV. CONCLUSION**

3 For good cause appearing and for the reasons stated above, the Court
4 recommends that Keahey's application to proceed *in forma pauperis*, (ECF No. 1), be
5 granted, and her complaint, (ECF No. 1-1), be dismissed, with prejudice, as amendment
6 would be futile.

7 The parties are advised:

8 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
9 Practice, the parties may file specific written objections to this Report and
10 Recommendation within fourteen days of receipt. These objections should be entitled
11 "Objections to Magistrate Judge's Report and Recommendation" and should be
12 accompanied by points and authorities for consideration by the District Court.

13 2. This Report and Recommendation is not an appealable order and any
14 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
15 District Court's judgment.

16 **V. RECOMMENDATION**

17 **IT IS THEREFORE RECOMMENDED** that Keahey's application to proceed *in*
18 *forma pauperis*, (ECF No. 1), be **GRANTED**;

19 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-
20 1);

21 **IT IS FURTHER RECOMMENDED** that Keahey's complaint, (ECF No. 1-1), be
22 **DISMISSED, WITH PREJUDICE**; and,

23 **IT IS FURTHER RECOMMENDED** that this action be **CLOSED**, and that judgment
24 be entered accordingly.

25 **DATED:** October 20, 2021.

26 
27 **UNITED STATES MAGISTRATE JUDGE**
28